

ADEPT
Legal Commentaries

May 2002

Parliament Activity Review April 29 - May 8, 2002

May 15, 2002

During the said period the Parliament focussed on the priorities set by the Government. The Parliament examined the draft laws, which were set by the international organizations as a condition for resuming funding and even adopted some of them in the final reading.

And this because the governing is under the pressure of foreign debts, which have reached the date of maturity this year. Another cause is the commitment of the incumbent governing party to meet its promises, namely to ensure social security of the population and to bring down the impoverishment of the population. Given the above said its crucial to resume the foreign aid, as the IMF and WB money might help pay pensions and salaries, which were increased by 20% as of May 1, 2002. Although left wing forces as a rule enjoy the support of the trade unions, this is not the case of the incumbent governing. Moldovan trade unions have threatened the Government to hold general strikes if it fails to increase the salaries. Under the circumstances the Government has to find additionally several hundreds of millions Lei. This further worsens the situation of the incumbent governing, especially given the budgetary deficit and the failure to receive revenues from privatization.

Despite the Easter and official (May 1 and 9) holidays the Parliament managed to examine and adopt a series of important laws.

Legislative acts adopted in the final reading

I. Law on Biological Security

ADEPT Comment: The law had been adopted at the end of 2001, but the President of the country refused to promulgate it and submitted a series of recommendations regarding the basic notions and principles. Specifically the President insisted on the inclusion of a provision prohibiting human cloning, as well as cloning of other organisms.

In addition, the President recommended the law to include the recommendations of the European Ordinance 2001/18.

II. Law on canceling penalties accrued by some economic enterprises that paid the arrears to the state social security budget

ADEPT Comment: For further details see the Legislative Commentary of [April 22-26, 2002](#).

III. Law on the modification of the Law on Tobacco and Law on Winery

ADEPT Comment: The modifications exclude the provisions regarding state support to the relevant industries via special funds set within the Ministry of Agriculture and Processing Industry. Representatives of the World Bank insisted on the modifications as one of the conditions for the SAC-III credit.

IV. Law on Completion of the Fiscal Code

ADEPT Comment: The law exempts from VAT tax the assets transferred by the economic units to the registered capital. This modification is also one of the conditions set forth by the World Bank in view of SAC-III credit.

V. Law on modification of several legal acts related to local public finances administering

ADEPT Comment: The law obliges local public administration bodies to use special destination transfers from the state budget exclusively for paying the salaries to public employees and social security taxes. Previously, several violations in administering financial resources received from the state budget have been registered. This was one of the reasons for modification of the Law on local public finances and for transferring the responsibility of administering the finances from the county councils to prefectures.

VI. Law on modification of the Law on Licensing

ADEPT Comment: Under the modifications, the telecommunication market will be liberalized by December 31, 2003, whereas wire telephone services will be provided in all the regions of the country except for Chisinau Municipality and county centers. The latter was so far an exclusive prerogative of national operator S.A. "Moldtelecom".

Liberalization of the telecommunication market was also one of the conditions for resuming crediting the Republic of Moldova, however the Government is not hurrying to meet the requirement as the public auction of S.A. "Moldtelecom" is scheduled for this year. Obviously the price for a monopolist operator will be higher than for the same operator when it has several competitors.

VII. Resolutions on appointments and dismissals

ADEPT Comment: The Parliament approved several resolutions, as follows:

- Mr. Anton Miron has been elected the Chairperson of the Commission for Public Administration. He will fill the vacancy after Vasile Iovv was appointed to the position of Deputy Prime Minister;
 - Mr. Valeriu Doga has been elected Secretary to the Juridical Commission for Appointments and Immunities. He will replace Nicolae Zara, who was transferred to the Commission on Environment and Territory Development;
 - Mr. Vasile Cretsu, University Lecturer has been appointed as a Member of the Supreme Magistracy Council. He will replace Iurie Sedletschi, whose mandate had expired.
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Legal acts adopted in the first (not-final) reading

I. Law on the enforcement procedure of the Law on Administrative-Territorial Organizations of the Republic of Moldova and the Law on Local Public Administration

ADEPT Comment: The draft provides that the said laws will be enforced after new administrative territorial units are formed and local public administration bodies are elected. Until then the provisions of the old laws shall be applied.

Thus the Parliament is trying to solve the problem produced by the Constitutional Court ruling recognizing as constitutional the new administrative-territorial division of the country, but outlawing the mechanisms of local public administration election and functioning.

Noteworthy, the relevant law was on the list of recommendations made by the Council of Europe in view of overcoming the political crisis.

II. Law on the modification and completion of the Law on the Court of Accounts

ADEPT Comment: The said law is also part of the conditions set forth by international organizations for resuming crediting the Republic of Moldova. The modifications refer to:

- improving the Court activity and excluding its competencies which are not specific to a supreme financial control body;
- optimizing the Court structure, excluding the provisions allowing the overlap of the Court functions with those of other fiscal control bodies;

- abolishing the Court right to oversee the administration of public patrimony;
 - abolishing the Court right to oversee the activity of economic enterprises, etc.
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III. Law on the modification of the Law on the Customs Fee

ADEPT Comment: The relevant modification reduces the cost of customs procedures from 0.25% to 0,15%.

IV. Law on the modification and completion of the Law on Telecommunication

ADEPT Comment: The modifications establish the term for liberalizing the IP-telephony services currently provided exclusively by the S.A."Moldtelecom". The term established is December 31, 2003.

The issue of liberalizing IP-telephony triggered numerous protests of the operators who were prohibited to provide such kind of services. International financial institutions also insist on liberalizing the IP market.

V. Law on the modification of several legal acts on cash payments

ADEPT Comment: The modification recommends increasing the maximum amount of payments allowed in cash from 5,000 to 10,000 Lei per month.

VI. Law on the completion of the Law on Customs Fee

ADEPT Comment: The completion recommends exempting the goods imported for the duty-free sale from VAT tax.

Parliament Activity Review May 27 - June 7, 2002

June 10, 2002

During the time covered by this commentary several important acts were developed and adopted. We would closely consider some of them.

Legislative acts adopted in the final reading

I. Law on Center for Fighting Economic Crime and Corruption

ADEPT comment: The draft law was examined over a month. It was one of the most contested and debated pieces of legislation the incumbent Parliament had examined. The status and prerogatives of the newly established structured were contested not only by the opposition, but also by some members of the majority faction, which so far used to be very supportive of the Government initiatives. Further, the draft was severely criticized by the human rights organizations, which accused the incumbent governing of intending to limit the citizens' civil rights, and to establish a total control over the economic units, etc. It is worth mentioning Christian Democrat N. Alexei's stance. The former Deputy Minister of Interior had a great contribution to the establishment of the Department on Fighting Organized Crime and Corruption in 1997 via a presidential decree. Back then N. Alexei was also accused by the press for his attempt to establish an anti-constitutional structure, fact confirmed later on by the ruling of the Constitutional Court. The Court ruled that only a law might award the right to investigation.

The law adopted recently by the Parliament establishes the following:

1. The status of the Center for Fighting Economic Crime and Corruption (CFECC), as a central specialized body in fighting financial and economic frauds and corruption.
2. Principles of CFECC activity: law; observing fundamental human rights and freedoms; opportunities, nonpartisanship; cooperation with local public administration and NGO etc.
3. CFECC main responsibilities are to: operate in line with Constitution and current law; treat legal and natural entities in a dignified manner; brief Parliament, Presidency, and Government of the Republic of Moldova; engage in fighting and investigating crimes in economy and finances as well as corruption.
4. CFECC main rights were adopted from legal acts regulating the activity of legal and fiscal control bodies. In particular, the great majority of rights provided in the Title V of the Fiscal Code were adopted.
The latter generated a lot of controversial discussion and criticism from business. Thus under the law, members of the Department will be entitled to hold a gun, which is to be used strictly in compliance with the established rules and procedures.
5. CFECC will include a central body and its branches in the field.
6. The Department shall be funded from the state budget. The department shall be also entitled to retain a certain quota of accrued penalties and sanctions.
7. CFECC staff shall be hired according to some special provisions. In addition the staff shall be conferred special ranks.
8. The law also provides for the social security, motivation, etc.

The Parliament should soon pass a law on the modification of the Code of Penal Procedure, so as to vest CFECC with the right to penal investigation. In addition, further amendments should be made to a series of laws regulating financial and fiscal control and investigation, etc.

We shall closely monitor the Center activity. Although it just has started its activity the Center already faces a rebuff and various organizational problems.

II. Law on modification of legal acts related to the judge status

ADEPT comment: Under the law the following amendments and completions are made:

- Procedure of estimating judicial experience, which entitles to run for the judge position;

- Failure by the Court Chair or his/her deputy to ensure the well-functioning of the court shall be interpreted as misconduct;
 - Resignation of the Chair or his/her deputy upon the expiration of a 4-year mandate;
 - Calculation of the pensions and indemnities, etc.
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III. Law on modification and completion of the Law on the State Budget for Year 2002

ADEPT comment: Under the law, deliveries of goods and services from the economic units, that have no fiscal agreements with the Republic of Moldova, shall be subject to VAT tax at the customs, according to the same procedure as imported goods.

The modification restores a balance in the activity of economic units from both sides of Dniester river. Prior to the amendment, Transdnistrian economic units enjoyed a more privileged situation and did not pay the VAT tax.

IV. Law on modification of the Code on enforcement of penal sanctions

ADEPT comment: Under the law, if prisoners violated the detention regulation, their working days wouldn't be calculated while they serve their term. However, life-sentenced, extremely dangerous prisoners, and those who deliberately committed a crime shall not be entitled to a privileged compensation of labor while they serve their sentence.

V. Law on the enforcement of the Law on social guarantees to the Government members

ADEPT comment: Under the law the benefits granted to the former Government members shall be extended to former Chairs of the Union of Consumption Associations, who served up to 4 years before 1990.

During the period covered by the report the Parliament heard a report on the enforcement of the Law on Consumption Cooperative Societies, and passed a resolution on:

- Imperfect activity of the "Moldcoop" Central Union of Consumption Cooperative Societies, as well as poor enforcement of the law by the Government;
 - Recommendations to make "Moldcoop" activity more efficient;
 - Entrusting the Government to ensure efficient enforcement of the Law on Consumption Cooperative Societies;
 - Recommendations to the Superior Magistracy Council to end the determent of the cases involving cooperative societies.
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VI. Law on Adherence to the Convention on the protection of worlds' cultural and natural patrimony

ADEPT comment: The Convention:

- Defines the cultural and natural patrimony;
 - Establishes the bodies entrusted to protect worlds' cultural and natural patrimony;
 - Establishes the procedure of forming and using the protection fund;
 - Determines conditions and ways of international cooperation and assistance.
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VII. Resolution on distribution of investment capital allotted for 2002

ADEPT comment: The law establishes the procedure of distributing the investment capital allotted for 2002, i.e. 100 million Lei. Noteworthy, the decision has been adjourned for several times. Many experts claimed that the respective funds could have been used to pay back Republic of Moldova foreign debts. The fact that the Parliament decided to allocate the funds points to the confidence of the incumbent governing in resuming external credits and its capacity to pay back the debts due in 2002.

Legal acts adopted in the first (not-final) reading

I. Draft law on the bar

ADEPT comment: The draft law was much debated in Parliament, as well as among specialists in the field. Noteworthy, bar issue drawn public attention both prior to the new Law on Bar adopted in 1999, as well as afterwards when the Constitutional Court outlawed several of its provision and even sanctioned the Chair of the Bar Association for challenging the correctness of the court ruling.

Given the above said, we would give a due consideration to the issue and shall come back with a more comprehensive analysis, thus involving experts in the field and NGOs in discussions.

II. Law on Army Reserve

ADEPT comment: The law establishes the structure of the reserve army and its training, guarantees to the citizens in the reserve army.

III. Law on mobilization

ADEPT comment: The law regulates mobilization preparation procedure, rights and responsibilities of the local public administration bodies, as well as legal and natural bodies active in the field.